

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BARONIUS PRESS, LTD., an Isle of Man  
limited company,  
  
Plaintiff,  
  
v.  
  
FAITHLIFE LLC, a Delaware limited  
liability company,  
  
Defendant.

Case No. 2:22-CV-01635-TL

DEFENDANT’S MOTION TO  
DISMISS

NOTE ON MOTION CALENDAR:  
JUNE 16, 2023

**I. INTRODUCTION**

This case is about the innocent, very limited distribution of one work—an English-language translation of a German-language theological text published in 1955. As the plaintiff Baronius Press, Ltd. itself alleges, defendant Faithlife LLC published this work for two months, voluntarily pulled it six months before being contacted by Baronius, and distributed a total of 75 copies. In all, Faithlife received \$388 in revenue, which Baronius does not contest.

For this publication, Baronius brings four claims—filed days before the expiration of the statute of limitations (applying the discovery rule). Specifically, Baronius alleges that the publication of that 1955 work infringed two different copyrights—an exclusive right in the original German work, *Grundriss der kotholischen Dogmatik* by Ludwig Ott (“*Grundriss*”), and the copyright to *Fundamentals of Catholic Dogma* by Dr. Patrick Lynch

1 (“*Fundamentals*”). Baronius also brings claims under the Digital Millennium Copyright Act  
2 for the reproduction and distribution of “false copyright management information”—  
3 specifically the copyright information from the copyright page of the 1950s book Faithlife  
4 scanned. But Baronius has not plausibly stated a claim as to any of its four claims.

5 **Count 1: *Grundriss* copyright infringement.** For *Grundriss*, Baronius has alleged  
6 (and its exhibits show) that it owns, at most, only a limited exclusive right to create,  
7 distribute, and publish a *new* English translation of *Grundriss*. Baronius does not, and cannot,  
8 allege that it possesses any exclusive rights to prior English translations, including  
9 *Fundamentals*. This is because of the limited right granted to Baronius, and because the  
10 assignment contracts expressly forbid Baronius from publishing *Fundamentals*. Because  
11 Baronius alleges only that Faithlife published the 1950s *Fundamentals*, and not Baronius’s  
12 new translation which was published in 2018, Baronius has not plausibly alleged infringement  
13 of a right it possesses and therefore lacks standing. The claim therefore should be dismissed.

14 **Count 2: *Fundamentals* copyright infringement.** For *Fundamentals*, Baronius has  
15 failed to plausibly allege ownership of the copyright or any exclusive right. As a restored  
16 work under the Uruguay Round Agreements Act, the U.S. copyright to *Fundamentals* vested  
17 by law in the “author.” The author, both in fact and as Baronius has alleged, is Dr. Patrick  
18 Lynch. While Baronius has alleged that Mercier Press (the original publisher from which  
19 Baronius’s rights allegedly derive) was the first copyright owner because it paid Dr. Lynch a  
20 translation fee, this is both irrelevant (because the URAA specifies copyrights are restored to  
21 “authors” and, even accepting Baronius’s allegations, Mercier Press would not be an “author”  
22 under Irish law) and incorrect (because Baronius has not pled plausible facts that could  
23 establish Mercier Press as the first copyright holder under Irish law). Baronius’s allegations  
24 and exhibits instead show that the U.S. copyright vested by law with Dr. Patrick Lynch, the  
25 author, and Baronius has not alleged that Dr. Lynch assigned any of his rights in writing to  
26 Mercier Press or Baronius. Because Baronius’s conclusory allegations of copyright ownership

1 are contradicted by law, its own factual allegations, and the exhibits to its complaint, Baronius  
2 has failed to plausibly plead ownership of the *Fundamentals* copyright and therefore lacks  
3 standing. This claim should also be dismissed.

4 **Counts 3 and 4: DMCA claims for distribution of false CMI.** Lastly, Baronius has  
5 failed to state a claim as to its DMCA claims for at least two reasons. First, if the Court  
6 dismisses Counts 1 and 2, Baronius lacks standing to pursue its DMCA claims. This is  
7 because Baronius’s alleged injuries derive entirely from ownership of the copyright (for  
8 *Fundamentals*) or exclusive right (for *Grundriss*). Second, Baronius has not pled plausible  
9 factual allegations to satisfy the intent requirement of Section 1202(a)—specifically that  
10 Faithlife acted “with the intent to induce, enable, facilitate, or conceal infringement” when it  
11 provided the CMI. Instead, Baronius has alleged only boilerplate recitations of the intent  
12 elements, while other factual allegations, complaint exhibits, and Faithlife’s uncontested  
13 statements (which are attached to the complaint) directly contradict any plausible intent and  
14 instead show that Faithlife made an innocent mistake.

15 Because Baronius has failed to state a claim on any of the four claims it brings, and  
16 now has had two chances to amend while rejecting a third opportunity, the Court should  
17 dismiss these claims with prejudice.

## 18 **II. STATEMENT OF FACTS**

### 19 **A. Baronius’s Alleged Ownership of an Exclusive Right for *Grundriss***

20 Baronius alleges the following:

21 *Grundriss* is a German work, authored by Ludwig Ott, and published in 1952 by  
22 Verlag Herder & Co. Plaintiff Baronius’s Second Amended Complaint, Dkt. # 48 (“SAC”) ¶  
23 28. An English-language version was created in 1955, *Fundamentals*. SAC ¶ 37. In 1985,  
24 Regina Ott, Ludwig’s sister and sole heiress, donated his estate to “Seminary of the diocese of  
25 Eichstätt” (which Baronius labels the “Seminary”). SAC ¶ 30. The actual 1985 “assignment  
26

1 of rights” document conveys rights to “Priesterseminar der Diözese Eichstätt.” SAC Exh. 2;  
2 Dkt. # 48-3 at p. 6.

3 In 2008, a *different* “Seminary,” “Bischöfliches Seminar Eichstätt, Collegium  
4 Willibaldinum,” made arrangements with nova et vetera (“Nova”) to create and publish a *new*  
5 English-language translation of *Grundriss*. SAC ¶ 32; Dkt. # 48-3 at p. 11. This contract  
6 between Nova and the Seminary states that “the older version of the text in the former form  
7 [i.e. *Fundamentals* (1955)] is by no means reused.” Dkt. # 48-3 at p. 12. In 2009 Nova  
8 conveyed this same right, to create and publish a new English-language translation, to  
9 Baronius. SAC ¶ 33, Exh. 2; Dkt. # 48-3 at pp. 13–15.

10 Baronius also alleges that the “Seminary” granted exclusive rights for *Grundriss* to  
11 Nova in 2004. SAC ¶ 32. Baronius does not explain the discrepancy between the two  
12 “Seminary” entities, or posit which entity conveyed its rights in 2004.

13 Baronius published a fully-revised new English-language translation of *Grundriss* in  
14 2018 (the “2018 Licensed Edition”). SAC ¶ 44. Baronius does not allege that Faithlife  
15 published the 2018 Licensed Edition of *Grundriss*. Rather, Baronius only alleges that Faithlife  
16 published *Fundamentals* (1955). SAC ¶ 49.

17 **B. Baronius’s Alleged Ownership of *Fundamentals***

18 Baronius alleges the following:

19 *Fundamentals* is a 1955 translation of *Grundriss*. SAC ¶ 36. It is an original work of  
20 authorship, authored by Dr. Patrick Lynch. SAC ¶ 36, 38. Baronius alleges Dr. Lynch was  
21 “commissioned” by Mercier Press to create the translation “as work for hire.” SAC ¶ 36.  
22 Baronius alleges that Dr. Patrick Lynch is the “author” of *Fundamentals*. SAC ¶ 25, Table 1.  
23 Baronius does not allege that Dr. Lynch was an employee or under a contract of service or  
24 apprenticeship with Mercier Press. Nor does Baronius allege (or attach) any writing by Dr.  
25 Lynch that assigns any exclusive right or license to Mercier Press, Baronius, or any of its  
26

1 predecessors in interest. Baronius alleges that it acquired all rights to *Fundamentals* from  
2 Mercier Press.

3 **C. Faithlife’s Publication of *Fundamentals* in 2019**

4 Baronius alleges that Faithlife published “at least seventy-five copies” of  
5 *Fundamentals* over three months, from March 24, 2019 to June 26, 2019. SAC ¶ 4, 49, 55.  
6 Specifically, Baronius alleges that Faithlife published the Second Edition of *Fundamentals*  
7 from March 1957. SAC ¶ 73. Baronius attached emails from Faithlife to Baronius to its  
8 complaint that show Faithlife’s publication of *Fundamentals* was accidental and without  
9 intent. SAC ¶ 62, 65, Exh. 6–7; Dkt. # 48-8–9. Specifically, that new Faithlife employees, not  
10 employed from 2013 to 2015, consulted a copyright renewal database rather than a copyright  
11 registration database under the mistaken belief that the initial 28-year protection under the  
12 1909 Copyright Act for a work published in the 1950s would have lapsed long ago. SAC ¶ 67,  
13 Exh. 7; Dkt. # 48-8 at p. 3, 9. Baronius does not contradict Faithlife’s explanations in the  
14 SAC.

15 **III. ARGUMENT**

16 **A. The SAC fails to state a claim for copyright infringement (Counts 1 and**  
17 **2).**

18 To state a claim for copyright infringement, Baronius must plausibly allege:  
19 “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that  
20 are original.” *Feist Pub’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *see Malibu*  
21 *Textiles, Inc. v. Label Lane Int’l, Inc.*, 922 F.3d 946, 951 (9th Cir. 2019). The SAC asserts two  
22 counts of copyright infringement.

23 For *Grundriss*, Baronius has failed to plausibly allege the second element.  
24 Specifically, although Baronius attaches documents to the SAC that appear to show that it has  
25 been assigned an exclusive right to the *Grundriss* copyright, Baronius has not alleged that  
26 Faithlife infringed that right. Indeed, the SAC conclusively shows that Faithlife has not.

1 For *Fundamentals*, Baronius has failed to plausibly allege that it owns a valid  
2 copyright or any exclusive right for at least two reasons. First, by statute, the copyright for  
3 this restored work vested automatically in the author, Patrick Lynch, and Baronius has failed  
4 to show that the author assigned that right to anyone. Second, even if the copyright could have  
5 vested in anyone aside from the author, Baronius has failed to plausibly allege that it has  
6 ownership of the copyright under Irish law.

7 **B. Grundriss: Baronius has not plausibly alleged that Faithlife infringed its**  
8 **exclusive right (Count 1).**

9 1. *Baronius has alleged, and its exhibits prove, that it owns an exclusive right*  
10 *to a new work—a new and revised edition of Fundamentals.*

11 Baronius concedes that Seminary Eichstätt is the copyright owner of *Grundriss*. SAC  
12 ¶¶ 28–35, Exh. 2; Dkt. # 48-3 at pp. 6–8. Instead, Baronius has alleged that it possesses an  
13 exclusive right to *Grundriss*, specifically that it “obtained the exclusive right to reproduce,  
14 adapt, and distribute *Grundriss English Edition*.” SAC ¶ 33; *see also* SAC ¶ 92 (“Plaintiff is,  
15 and has been since 2009, the exclusive licensee of the rights to reproduce, adapt and distribute  
16 an English-language edition of the German-language original work *Grundriss* (*‘Grundriss*  
17 *English Edition’*).”); ¶ 118. That right was obtained from *nova et vetera* (“Nova”), a  
18 publishing company, that obtained the same right from the copyright holder, the Seminary, in  
19 2008. SAC ¶ 32 (“In November 2008. Seminary granted the rights to an English-language  
20 edition of *Grundriss* (*‘Grundriss English Edition’*) to Nova for the remaining duration of the  
21 copyright.”).

22 Baronius further alleges that, “[d]ue to errors in the original English translation which  
23 undermined the reputation of *Fundamentals*, the exclusive license from Nova required  
24 Plaintiff to publish *Fundamentals* only after it had been revised, corrected and approved by  
25 Nova.” SAC ¶ 43. In other words, Baronius alleges that it possesses an exclusive right to  
26 create and publish a new English translation of *Grundriss*, which Baronius labels *Grundriss*

1 *English Edition*. Baronius published that revised new work, presumably after receiving  
2 approval, in 2018. SAC ¶ 44 (“In April 2018, Plaintiff published its new fully revised and  
3 updated edition of *Fundamentals*.”); *see also* SAC Exh. 9; Dkt. # 48-10 (containing the  
4 copyright information page from Baronius’s new 2018 edition stating “This edition first  
5 published in 2018 by Baronius Press” and “This new edition by Baronius Press is based on  
6 the original translation by Mercier Press. It has been fully revised and updated and it  
7 conforms to the latest 11<sup>th</sup> German edition of *Grundriss der Katholischen Dogmatik* published  
8 by nova & vetera, Bonn, Germany in 2010.”).

9       The exhibits attached to the SAC confirm these allegations and add further clarity.  
10 Exhibit 2 contains both the 2008 contract between the Seminary and Nova and the 2009  
11 contract between Nova and Baronius. SAC Exh. 2; Dkt. # 48-3 at pp. 12–19. The 2008  
12 contract is in German, but Baronius attached an English translation. It states:

13               “In addition to the publishing contract dated 6/11. July 2004 the  
14 publisher nova vetera e.K., Bonn, hereby also the right for an  
15 English-language edition of the Grundrisses der Dogmatik of Prof.  
16 Dr. Ludwig Ott.

17               The bishop’s seminary of St. Willibald in Eichstatt receives a copy  
18 of every edited version of the English version.

19               In light of the controversy surrounding the English edition in the  
20 1960s, the publisher nova & vetera e.k. ***To ensure that the old  
21 version of the text in the former form is by no means reused.***

22               Eichstatt, 10 November 2008”

23 SAC Exh. 2; Dkt. # 48-3 at p. 12 (emphasis added).<sup>1</sup> As the above makes clear, the right  
24 granted to Nova from the Seminary was limited to creating a *new* English translation and  
25 Nova was expressly forbade from publishing “the old version of the text in the former form”

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26 <sup>1</sup> This contract references a 2004 contract between Nova and the Seminary. Baronius alleges that, in this  
contract, “Seminary granted exclusive controlling rights for *Grundriss* to *nova et vetera* (*‘Nova’*). This contract  
is not attached to the complaint or otherwise referenced, but it is not relevant to the issues here.

1 (i.e. *Fundamentals* as translated by Patrick Lynch in 1955). Nova did not obtain any rights to  
2 publish the original 1955 version of *Fundamentals*, or any other prior versions.

3 The 2009 contract between Nova and Baronius conveys the same limited right to  
4 create and publish a new English translation. Specifically, Section 1 states that Baronius is  
5 granted “the exclusive license **to translate** and publish the Work in volume form in the  
6 ENGLISH language . . .”. SAC ¶ 33 Exh. 2, Dkt. # 48-3 at p. 13 (emphasis added).<sup>2</sup> Section 2  
7 states “[t]he Publishers will have a period of three years from the date of this contract in  
8 which to **prepare** an English translation of the 11. Edition. This must be submitted for  
9 approval by the Publishers to the Proprietors prior to publication.” *Id.* at p. 13 (emphasis  
10 added). Section 9 clarifies that “All Rights in the Work, other than those specifically granted  
11 to [Baronius] under this Agreement, are reserved by [Nova].” *Id.* at p. 14. Thus, as with the  
12 2008 Contract, the 2009 Contract granted Baronius the right to translate and publish a *new*  
13 English translation of *Grundriss*, specifically one based on the new 11<sup>th</sup> edition of the  
14 German-language *Grundriss*. The 2009 contract does not grant Baronius any rights to publish  
15 other works, including the existing 1955 edition of *Fundamentals*—only the right to prepare a  
16 new translation, subject to approval by Nova before publication.

17 In sum, Baronius does not possess an exclusive right as to the original work  
18 *Fundamentals* that was first published in 1955. Baronius does not allege such a right and the  
19 exhibits Baronius has attached conclusively prove it. Indeed, Baronius’s rights granted from  
20 the copyright holder expressly exclude the 1955 *Fundamentals* edition, and Baronius admits  
21 that it is barred by contract from publishing that version.<sup>3</sup> Instead, Baronius alleges (and its  
22

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23 <sup>2</sup> “The Work” is defined as “*Grundriss der katholischen Dogmatik*” by Ludwig Ott. Exh. 2.

24 <sup>3</sup> See also FAC Exh. 8, Dkt. # 13-9 at p. 2 (Jan. 31, 2020 letter from Baronius to Faithlife stating “[U]nder the  
25 terms of our exclusive license, Baronius was prohibited from publishing *Fundamentals* until the text had been  
26 revised, corrected and approved by the German copyright holder for faithfulness to the latest 11<sup>th</sup> edition of the  
original work *Grundriss der katholischen Dogmatik* (‘*Grundriss*’). After several years of extensive re-translation  
and editorial works, Baronius obtained a new *Imprimatur* and published this revised and updated edition of  
*Fundamentals* on April 23, 2018.”).



1 exhibits show) that it possesses an exclusive right to publish a *new* English translation of  
2 *Grundriss*. Baronius alleges that it published this new version in 2018. *See* SAC ¶ 44, Exh. 9;  
3 *see also* FAC Exh. 8; Dkt. # 13-9 at p. 2 (describing the new translation as requiring “several  
4 years of extensive re-translation and editorial works”).

5  
6 2. *Baronius alleges that Faithlife published the 1955 Fundamentals—not  
Baronius’s newly revised 2018 work.*

7 Baronius does not allege that Faithlife published Baronius’s new 2018 translation of  
8 *Grundriss*. Instead, Baronius alleges that Faithlife published the “The English-language  
9 translation of *Grundriss* entitled *Fundamentals of Catholic Dogma* (‘*Fundamentals*’)” that  
10 “was first published by Mercier Press in Ireland in 1955.” *See* SAC ¶¶ 36, 37, 49; *see also*  
11 ¶ 96 (“Defendant willfully, intentionally and purposefully reproduced and distributed  
12 *Grundriss English Edition, and/or a substantially similar reproduction thereof.*”).

13 This is further confirmed by both the exhibits attached to the Second Amended  
14 Complaint, as well as the First Amended Complaint. SAC Exhibit 9 shows Faithlife’s  
15 publication of *Fundamentals*, which specifically lists “Copyright 1957 B. Herder Book  
16 Company”—i.e. the copyright information from the 1957 edition of the book that Faithlife  
17 scanned and published (the same edition Faithlife mistakenly published in 2013 before the  
18 new 2018 translation had even been published).<sup>4</sup> Dkt. # 48-10 at p. 2. Similarly, Exhibit 8 to  
19 the First Amended Complaint is a January 31, 2020 letter from Baronius to Faithlife.<sup>5</sup> Dkt.  
20 #13-9 at p. 2. In it, Baronius expressly states “The original translation of *Fundamentals* **that**

21  
22 <sup>4</sup> This is seen even clearer in Exhibit 7 to the First Amended Complaint, which shows the complete copyright  
23 pages from the scanned copy of *Fundamentals* that Faithlife published—confirming that it was the Second  
Edition, March 1957 translated by Patrick Lynch. This Exhibit was omitted from the Second Amended  
Complaint.

24 <sup>5</sup> Baronius omitted this exhibit from its Second Amended Complaint, but did attach it to the Original and First  
25 Amended Complaints. To the extent this exhibit is not considered part of the pleadings because Baronius  
26 excluded it from the Second Amended Complaint, the Court may take judicial notice of this document because it  
is generally known within the Court territorial jurisdiction (it was publicly filed, twice) and it can be accurately  
and readily determined from sources whose accuracy cannot reasonably be questioned (Baronius itself attached  
the document and alleged its authenticity).

1 ***Faithlife published*** (B. Herder Book Company, 1957, Second Edition) is known to have  
2 several historical, theological, doctrinal and substantial grammatical errors.” *Id.*

3 In sum, Faithlife published the original *Fundamentals* translation from the 1950s  
4 (specifically the Second Edition from March 1957). There are no allegations that Faithlife  
5 published the revised and new 2018 English translation of *Grundriss* from Baronius (nor  
6 could there be, because Faithlife did not publish it).

7 3. *Baronius cannot state a claim because it does not allege that Faithlife*  
8 *infringed the right it allegedly possesses.*

9 Baronius has no standing for a copyright infringement claim based on its exclusive  
10 rights granted by Nova to an English translation of *Fundamentals* because that right was  
11 limited to creating a new translation that Faithlife did not publish. “[O]nly ‘the legal or  
12 beneficial owner of an exclusive right under a copyright is entitled, subject to the  
13 requirements of Section 411, to institute an action for an infringement ***of that particular right***  
14 committed while he or she is the owner of it.’” *Minden Pictures, Inc. v. John Wiley & Sons,*  
15 *Inc.*, 795 F.3d 997, 1003 (9th Cir. 2015) (citing 17 U.S.C. § 501(b)) (emphasis added). When  
16 a copyright owner transfers some exclusive rights, but not all, the copyright owner “will still  
17 have standing to sue as the legal owner of the rights that were not transferred” but “no longer  
18 has standing to sue for the rights that have been transferred.” *Fathers & Daughters Nevada,*  
19 *LLC v. Lingfu Zhang*, 284 F. Supp. 3d 1160, 1167–68 (D. Or. 2018). In the same vein, the  
20 transferee only has standing as to infringements against exclusive rights that have been  
21 granted to it. *See Minden Pictures*, 795 F.3d at 1003 (9th Cir. 2015) (“Thus a party granted an  
22 exclusive license to display a work may bring an infringement action challenging the  
23 unauthorized display of that work by another party, even though the licensee does not hold  
24 legal title to the work.”); *see also Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881,  
25 885 (9th Cir. 2005) (“[I]n order for a plaintiff to be ‘entitled . . . to institute an action’ for  
26

1 infringement, the infringement must be ‘committed while he or she is the owner of’ *the*  
2 *particular exclusive right allegedly infringed.*”) (emphasis added).

3 As the Ninth Circuit has explained:

4 In other words, exclusive rights may be chopped up and owned  
5 separately, and each separate owner of a subdivided exclusive right  
6 may sue to enforce that owned portion of an exclusive right, no  
7 matter how small. For instance, A may own the copyright in a book,  
8 while B may own the right to develop the book into a screenplay. A  
may sue an infringer of the book; B may sue an infringer of the  
screenplay. But only owners of an exclusive right in a copyright may  
sue.

9 *Silvers*, 402 F.3d at 887.

10 Baronius alleges that it has an exclusive right to distribute and publish a new English  
11 translation of *Grundriss*, which had to be specifically approved by the rightholder before  
12 publication. That “fully revised and updated” edition was published in 2018. The limited  
13 nature of Baronius’s alleged exclusive right is confirmed by the contracts attached to the SAC  
14 showing that the copyright holder granted a limited exclusive right to create a new English  
15 translation and expressly forbade any rights to distribute or publish the existing *Fundamentals*  
16 translation from the 1950s. Baronius does not allege that Faithlife infringed that exclusive  
17 right. Instead, Baronius alleges that Faithlife published the original *Fundamentals* translation  
18 by Patrick Lynch from the 1950s (specifically Second Edition March 1957). Baronius has not  
19 alleged that it possesses (and indeed does not possess) an exclusive right to this work through  
20 its 2009 contract with Nova. As to Count 1, Baronius relies exclusively on its exclusive rights  
21 to “*Grundriss English Edition*” granted under its 2009 contract with Nova. Because  
22 Baronius’s allegations fail to plausibly allege that Baronius has standing to assert a copyright  
23 infringement claim as to rights it does not possess, Count I must be dismissed for failure to  
24 state a claim.

1           **C.     *Fundamentals*: Baronius has not plausibly alleged ownership of the**  
2           **copyright or any exclusive right (Count 2).**

3           Baronius has failed to plausibly plead ownership of the *Fundamentals* copyright, or  
4           any exclusive right, for at least two reasons. First, by statute, the U.S. copyright to  
5           *Fundamentals* was automatically restored and vested in the author. Baronius has conceded  
6           that Patrick Lynch was the author of *Fundamentals*—indeed, Baronius listed Patrick Lynch as  
7           the author on its copyright registration. Because Baronius has not alleged, or attached as an  
8           exhibit, any written assignment of rights from Patrick Lynch, Baronius has failed to plausibly  
9           state a claim. Second, even if the restored U.S. copyright could have vested in someone other  
10          than the author, setting aside the clear statutory language, Baronius has failed to allege facts  
11          that could establish that the initial copyright vested in Mercier Press, as opposed to the author,  
12          Patrick Lynch. Baronius’s claim thus fails for the same ultimate reason: there is no written  
13          assignment from Patrick Lynch of any rights.

14           **1.     *Baronius bears the burden of pleading plausible facts that establish ownership***  
15           ***of the copyright to Fundamentals.***

16          A copyright infringement plaintiff “bears the burden of proving copyright ownership.”  
17          *Choyce v. SF Bay Area Ind. Media Ctr.*, 2014 WL 5597274, at \*1 (N.D. Cal. Nov. 3, 2014)  
18          (quoting *Fleischer Studios, Inc. v. A.V.E.L.A., Inc.*, 654 F.3d 958, 962 (9th Cir. 2011)). This is  
19          because “ownership of a valid copyright” is necessary “to state a claim for copyright  
20          infringement.” *Hyowon Elecs., Inc. v. Eron, Inc.*, 2014 WL 12560693, at \*3 (C.D. Cal. May  
21          15, 2014). “Ownership of the copyright is therefore always a threshold question.” *Id.* (quoting  
22          *Topolos v. Caldewey*, 698 F.2d 991, 994 (9th Cir. 1983)).

23          “Ordinarily, a certificate of registration raises the presumption of copyright validity  
24          and ownership.” *Hyowon Elecs., Inc. v. Erom, Inc.*, 2014 WL 12560693, at \*3 (N.D. Cal. May  
25          15, 2014) (quoting *Dream Games of Ariz., Inc. v. PC Onsite*, 561 F.3d 983, 987 n.2 (9th Cir.  
26          2009) (cleaned up)). But that presumption only applies where the registration is “made before

1 or within five years after first publication of the work.” 17 U.S.C. § 410(c); *see also Art of*  
2 *Living Foundation v. Does 1-10*, 2012 WL 1565281, at \*8 (N.D. Cal. May 1, 2012) (“Because  
3 the registration was obtained more than five years after the [Work’s] first publication, the  
4 registration certificate, on its own, does not constitute prima facie evidence of valid copyright  
5 ownership.”). Thus, where no presumption applies, a plaintiff must sufficiently allege  
6 copyright ownership either through plausible factual allegations or verifiable, judicially  
7 noticeable documents. *Hyowon Elecs.*, 2014 WL 12560693, at \*3. Here, Baronius has failed  
8 to do so. Indeed, Baronius’s allegations and the documents attached to the complaint instead  
9 establish that Baronius is *not* the owner of the U.S. copyright to *Fundamentals*.

10 2. *The U.S. copyright to Fundamentals vested automatically in the author, who*  
11 *has not granted any rights to Baronius.*

12 *Fundamentals* is a restored work. Baronius admits that in its Second Amended  
13 Complaint, alleging that “*Fundamentals* was not published in the U.S. during the 30-day  
14 period following its first publication in Ireland, but was in the public domain in the U.S. from  
15 1955 (because it did not comply with formalities imposed at any time by U.S. law)” and that  
16 “[t]he copyright to *Fundamentals* was restored on January 1, 1996 under the URAA.” SAC  
17 ¶ 39. Baronius alleges that the U.S. copyright was restored “to its initial copyright holder  
18 Mercier Press” but, under the plain language of the statute, this is incorrect. *Id.*

19 Under the URAA, the U.S. copyright in a restored work “vests initially in the author  
20 or initial rightholder of the work as determined by the law of the source country of the work.”  
21 17 U.S.C. § 104A(b). The URAA thus establishes two categories of foreign copyright owners  
22 whose U.S. copyrights can be restored: (1) authors, and (2) initial rightholders. But here,  
23 “initial rightholder” is not applicable—the URAA expressly limits “initial rightholders” only  
24 to owners of a copyright in a “sound recording,” e.g. music composers. 17 U.S.C.  
25 § 104A(h)(7). Because *Fundamentals* is not a sound recording, the U.S. copyright to  
26 *Fundamentals* vested in the “author.”

1 Baronius alleges, and it is true, that Dr. Patrick Lynch is the “author” of  
2 *Fundamentals*. See SAC ¶ 25, Table 1 (listing “Dr. Patrick Lynch” as the “Author” of  
3 “*Fundamentals* of Catholic Dogma”).<sup>6</sup> Baronius also listed Dr. Patrick Lynch as the “author”  
4 of *Fundamentals* in its copyright registration of *Fundamentals* that it filed in 2014. See SAC  
5 Exh. 3, Dkt. # 48-4 at p. 9. Instead, Baronius alleges only that “Mercier Press paid a fee of  
6 259.10 Irish pounds to the Translator and became an initial copyright holder of  
7 *Fundamentals*.” SAC ¶ 36. But, except as to sound recordings, the URAA permits U.S.  
8 copyrights to be restored only to an “author.” Because Baronius alleges that Dr. Patrick Lynch  
9 is the “author,” Baronius has not plausibly alleged that the U.S. copyright was restored to  
10 anyone other than Dr. Patrick Lynch.

11 3. *Under Irish law, Mercier Press was not the first copyright holder (or author)*  
12 *of Fundamentals.*

13 Faithlife understands that the parties agree that the operative law in Ireland in 1953  
14 through 1955 (when *Fundamentals* was authored and published) pertaining to copyrights was  
15 the Industrial and Commercial Property (Protection) Act of 1927.<sup>7</sup> Section 158(1) provides  
16 that “the author of a work shall be the first owner of the copyright therein” with only two  
17 exceptions. Indus. And Com. Prop. (Protection) Act 1927 (Act No. 16/1927) (Ir.),  
18 <https://www.irishstatutebook.ie/eli/1927/act/16/section/158/enacted/en/html#>. First, “where,  
19 in the case of an engraving, photograph, or portrait, the plate or other original was ordered by  
20 some other person and was made for valuable consideration in pursuance of that order, then,  
21 in the absence of any agreement to the contrary, the person by whom such plate or other  
22 original was ordered shall be the first owner of the copyright.” *Id.* at § 158(1)(a). Second,

23  
24 <sup>6</sup> The Original and First Amended Complaint contained further allegations that “*Fundamentals of Catholic*  
25 *Dogma* (‘*Fundamentals*’) was authored by Dr. Patrick Lynch . . .” but these allegations were omitted from the  
26 Second Amended Complaint. Compare Compl. ¶ 26 and FAC ¶ 26, with SAC ¶ 36.

<sup>7</sup> A copy of this statute, provided by the Office of the Attorney General of Ireland, can be found at  
<https://www.irishstatutebook.ie/eli/1927/act/16/enacted/en/print#sec158> and a copy is attached as Exhibit 1.  
Faithlife requests judicial notice be taken of this statute pursuant to Fed. R. Evid. 201.

1 “where the author was in the employment of some other person under a contract of service or  
2 apprenticeship and the work was made in the course of his employment by that person, the  
3 person by whom the author was employed shall, in the absence of any agreement to the  
4 contrary, be the first owner of the copyright . . .” *Id.* at §158(1)(b).<sup>8</sup>

5 As an initial matter, these exceptions are irrelevant to determining in whom the U.S.  
6 copyright to *Fundamentals* vested when it was restored. This is because neither exception  
7 changes who is the “author.” Instead, the statute expressly distinguishes between the “author”  
8 and the “first owner of the copyright.” Even if Mercier Press qualified as the first owner of the  
9 copyright, it still is not the “author” under Irish law, and therefore the U.S. copyright to  
10 *Fundamentals* could not have vested in Mercier Press.

11 But here, Baronius’s factual allegations also establish that the two exceptions under  
12 Irish law do not apply, and Dr. Patrick Lynch was the first owner of the copyright, not  
13 Mercier Press. The first exception is plainly inapplicable—*Fundamentals* is not “an  
14 engraving, photograph, or portrait” and Baronius has not alleged it is. And the second  
15 exception also does not apply. The complaint does not contain any allegations that Dr. Patrick  
16 Lynch was “in the employment” of Mercier Press or that “the work was made in the course of  
17 his employment.” Instead, the complaint alleges that Mercier Press “became an initial  
18 copyright holder of *Fundamentals*” because *Fundamentals* “was commissioned by Mercier  
19 Press, Ireland as work for hire to Dr. Patrick Lynch” and “Mercier Press paid a fee of 259.10  
20 Irish pounds to [Dr. Patrick Lynch].”<sup>9</sup> The only evidence attached to the complaint is  
21 consistent with this description—that Dr. Patrick Lynch was not an employee or apprentice,  
22

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23 <sup>8</sup> This remains the law in Ireland today. *See* Copyright and Related Rights Act, 2000 at Section 23 (Act. No.  
24 28/2000), <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html#> (“The author of a work shall be the  
25 first owner of the copyright unless (a) the work is made by an employee in the course of employment, in which  
26 case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary ...”).

<sup>9</sup> Although Baronius references “work for hire,” that phrase does not appear in the operable Irish statute. To the  
extent this references “work made for hire” under U.S. copyright law, that is irrelevant here because the law of  
the source country, Ireland, applies. 17 U.S.C. § 104A(b).

1 but rather an independent person to whom Mercier Press paid discrete translation fees for  
2 specific works. *See* SAC Exh. 3; Dkt # 48-4 at pp. 6–7 (ledger showing sporadic payments to  
3 Dr. Patrick Lynch for specific translations).

4 Because Dr. Patrick Lynch was not an employee or apprentice, and the work was not  
5 created during the course of that employment (and *Fundamentals* is not an engraving,  
6 photograph, or portrait), Dr. Patrick Lynch, “the author of [the] work,” was “the first owner of  
7 the copyright therein” under Irish law in the 1950s. Thus, even if the U.S. copyright could  
8 have been restored to someone other than the “author” (or even if the “first owner of the  
9 copyright” under Sections 158(1)(a) or (b) qualified as the “author” under Irish law),  
10 Baronius’s allegations show that Dr. Patrick Lynch, not Mercier Press, was the first owner of  
11 the copyright under Irish law.

12 4. *Baronius has not plausibly alleged that Dr. Patrick Lynch assigned his U.S.*  
13 *copyright to Mercier Press, Baronius, or anyone else.*

14 Whether looking at the “author” or “first owner of the copyright,” Baronius’s  
15 allegations plausibly establish that the restored U.S. copyright to *Fundamentals* vested in Dr.  
16 Patrick Lynch. Under both U.S. and Irish law—in the 1950s and today—a copyright may only  
17 be assigned by written agreement. *See* Indus. And Com. Prop. (Protection) Act 1927 at  
18 Section 158(2) (Act No. 16/1927) (Ir.),  
19 <https://www.irishstatutebook.ie/eli/1927/act/16/section/158/enacted/en/html#> (“The owner of  
20 the copyright in any work may assign the right . . . but no such assignment or grant shall be  
21 valid unless it is **in writing** signed by the owner of the right in respect of which the  
22 assignment or grant is made”); Copyright and Related Rights Act, 2000 at Section 120(3) (Act  
23 No. 28/2000), <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html> (“An  
24 assignment of the copyright in a work, whether in whole or in part, is not effective unless it is  
25 **in writing** and signed by or on behalf of the assignor”); 17 U.S.C. § 28 (1909 Act)  
26 (“Copyright secured under this title or previous copyright laws of the United States may be



1 assigned, granted, or mortgaged by an instrument **in writing** signed by the proprietor of the  
2 copyright, or may be bequeathed by will.”); 17 U.S.C. § 204(a) (“A transfer of copyright  
3 ownership, other than by operation of law, is not valid unless an instrument of conveyance, or  
4 a note or memorandum of the transfer, is **in writing** and signed by the owner of the rights  
5 conveyed or such owner’s duly authorized agent.”).

6 There are no allegations in the Second Amended Complaint, and no documents  
7 attached exhibiting, that Dr. Patrick Lynch assigned any of his exclusive rights to the U.S. (or  
8 other) copyright in *Fundamentals* in writing. Instead, the chain of title alleged in the Second  
9 Amended Complaint stops at Mercier Press. *See* SAC Exh. 3; Dkt. #48-4. Count 2 therefore  
10 should be dismissed for failure to state a claim because Baronius has not plausibly alleged  
11 ownership of the copyright of which it alleges infringement. *See, e.g., Fleischer Studios, Inc.*,  
12 654 F.3d at 962 (9th Cir. 2011).

13 **D. Counts 3 and 4: Baronius fails to state a claim for violation of the Digital**  
14 **Millennium Copyright Act.**

15 *1. Baronius has not plausibly alleged ownership or exclusive right to Grundriss*  
16 *or Fundamentals and therefore has no injury or standing.*

17 The DMCA provides a private right of action to “[a]ny person injured by a violation of  
18 section 1201 or 1202.” 17 U.S.C. § 1203(a). Baronius’s only alleged injuries stem from  
19 Baronius’s alleged ownership or other interest in *Grundriss* or *Fundamentals*. SAC ¶ 128,  
20 145. As detailed above, *see supra* Sections III.A–C, Baronius has not plausibly alleged that it  
21 owns the copyright to, or holds any exclusive right in, *Grundriss* or *Fundamentals*, does not  
22 have standing for its copyright infringement claims, and those claims should be dismissed for  
23 failure to state a claim.

24 Where a plaintiff fails to show an ownership interest in the underlying copyright, and  
25 the alleged injury derives from that copyright, there is no standing for a DMCA claim. *See,*  
26 *e.g., Shah v. NYP Holdings, Inc.*, 2023 WL 266511, at \*4 (N.D. Ill. Jan. 18, 2023) (“Absent

1 an ownership interest in the images, it is unclear how [plaintiff] faced any injury as a result of  
2 the allegedly improper attribution of these photographs to IMDb or Facebook.”); *Pisciotti v.*  
3 *Brittingham*, 2022 WL 2392198, at \*14 n.25 (W.D. Wa. July 1, 2022) (“Finally, [plaintiff]  
4 must establish that he owns the copyright in the Work to prove that he was injured by  
5 [defendant’s] alleged section 1202 violations. *See* 17 U.S.C. § 1203(a). The Court does not  
6 mean to suggest that only copyright owners have standing to bring DMCA claims. . . . But  
7 [plaintiff]’s complaint makes clear that, at least in this case, whether he was injured turns on  
8 confirmation of his ownership.”). Here, Counts 3 and 4 are clear that Baronius’s alleged  
9 injuries turn on its ownership of the copyrights, or exclusive rights therein. *See* SAC ¶¶ 117–  
10 119, 134–136 (re-alleging Baronius’s ownership interests in the copyrights); ¶¶ 128, 145  
11 (describing Baronius’s “actual damages” as “arising from reputation damage, legal fees,  
12 diminished market value of [the allegedly infringed work], and loss of control of ownership of  
13 [the allegedly infringed work].”). If Counts 1 and 2 are dismissed, Counts 3 and 4 also should  
14 be dismissed for lack of standing.

15       2.       *Baronius fails to plausibly allege Faithlife knowingly provided false CMI and*  
16               *did so with intent to induce, enable, facilitate, or conceal an infringement.*

17       Baronius also fails to state a claim for violation of Section 1202(a) of the DMCA  
18 because it has not plausibly alleged facts that satisfy the intent requirements.<sup>10</sup> Section  
19 1202(a) states that “no person shall knowingly and with the intent to induce, enable, facilitate,  
20 or conceal infringement—(1) provide copyright management information that is false, or (2)  
21 distribute or import for distribution copyright management information that is false.” 17  
22 U.S.C. § 1202(a). Thus, § 1202(a) requires that the plaintiff “plausibly allege that the  
23 defendant knowingly provided false copyright information *and* that the defendant did so with  
24 the intent to induce, enable, facilitate, or conceal an infringement.” *LIVN Worldwide Ltd. v.*

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25 <sup>10</sup> While the Second Amended Complaint does not specify between Sections 1202(a) and (b), there are no  
26 allegations that Baronius altered or removed copyright management information. Therefore Section 1202(b) is  
inapplicable here.

1 *Vubiquity Inc.*, 2022 WL 18278580, at \*5 (C.D. Cal. July 22, 2022) (emphasis in original)  
2 (quoting *Krechmer v. Tantaros*, 747 Fed. App'x. 6, 9 (2d Cir. 2018)). “At the pleading stage,  
3 the claimant must plead facts plausibly showing that the alleged infringer had this required  
4 mental state.” *Free Speech Sys., LLC v. Menzel*, 390 F. Supp. 3d 1162, 1175 (N.D. Cal. June  
5 18, 2019).

6 Baronius fails to plausibly allege such intent because the allegations merely recite the  
7 elements of intent required under § 1202(a) of the DMCA—and those allegations are directly  
8 contradicted by both factual allegations and the documents attached to the complaint.<sup>11</sup>  
9 *Morgan v. Associated Press*, 2016 WL 6953433, at \*3 (granting defendant’s motion to  
10 dismiss a § 1202(a) claim and holding that “a formulaic recitation of the elements of a cause  
11 of action, including allegations regarding a defendant's state of mind, are not sufficient to  
12 satisfy Rule 8.”); *see also Mills v. Netflix, Inc.*, 2020 WL 548558, at \*3 (C.D. Cal. Feb. 3,  
13 2020) (same and collecting cases in accord).

14 All of Plaintiff’s allegations as to intent with respect to CMI are set out below:

- 15 • ¶ 4: “Upon information and belief, Defendant knowingly, and with an intent to induce,  
16 enable, facilitate, or conceal its infringement, knowingly provided false [CMI] in at  
17 least seventy-five copies of *Fundamentals* for which Plaintiff holds copyright rights,  
18 displaying false CMI in at least seventy-five copies of *Fundamentals* that it  
19 reproduced and distributed.”

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21 <sup>11</sup> Baronius also fails to plausibly allege knowledge, but for purposes of this motion, Faithlife has focused on the  
22 clear absence of plausible allegations of intent to induce, enable, facilitate, or conceal an infringement. While  
23 Baronius alleges that Faithlife had knowledge through its prior 2013 publication of *Fundamentals*, Baronius also  
24 attaches to the complaint Faithlife’s repeated explanation that the 2013 employees had left the company by 2019  
25 and the new employees made the same mistake in 2019 in researching the copyrights and mistakenly believed  
26 *Fundamentals* to be in the public domain. Baronius has not contested these explanations, or made contrary  
factual allegations other than boilerplate statements of knowledge, and therefore cannot plausibly allege  
knowledge either.

- 1 • ¶ 74: “Defendant provided Fundamentals with false CMI intentionally and  
2 purposefully.”
- 3 • ¶¶ 97, 110: “Defendant attempted to conceal its aforementioned acts of copyright  
4 infringement by providing [*Grundriss English Edition / Fundamentals*] with false  
5 CMI, by publishing statements that it is negotiating with the copyright holder to obtain  
6 a permission to reproduce and distribute [*Grundriss English Edition / Fundamentals*],  
7 and other acts of concealment as alleged in this Complaint, as well as other acts of  
8 concealment not currently known by Plaintiff.”
- 9 • ¶¶ 76, 124, 141: “Defendant purposefully concealed its acts of willful copyright  
10 infringement from the public on its online Forums by using the term “new  
11 copyright holder” instead of clearly stating that Plaintiff was the copyright holder of  
12 *Grundriss English Edition* [and *Fundamentals*].”
- 13 • ¶¶ 126, 143: “The conduct of Defendant was intentional and purposeful at a minimum  
14 as Defendant had constructive and actual knowledge of the true copyright holder of  
15 *Grundriss English Edition* [and *Fundamentals*].”

16 Every allegation above is conclusory and implausible. Baronius alleges Faithlife acted  
17 with intent because “Defendant had actual or constructive knowledge of the true copyright  
18 holder.” But alleging knowledge does not plausibly allege intent. If knowledge was all that  
19 was required to show that a defendant acted “intentionally” under the DMCA, the statute  
20 would not require both knowledge and intent. There are no allegations at all as to Faithlife’s  
21 mental state or any specific factual allegations supporting the plausibility that Faithlife  
22 intended to induce, enable, facilitate, or conceal infringement—the only allegation that comes  
23 close relates to a statement Faithlife made *after* removing *Fundamentals* from publication  
24 (and thus does not show intent in the initial CMI publication). For this reason alone, the Court  
25 should grant Faithlife’s motion to dismiss Plaintiff’s DMCA claim. *See Morgan*, 2016 WL  
26 6953433, at \*3.

1 But these allegations are especially implausible because they are directly contradicted  
2 by Baronius’s own factual allegations. Specifically, Baronius alleges that:

- 3 • Faithlife published *Fundamentals* for two months—from April 25, 2019 to June  
4 26, 2019. SAC ¶¶ 49, 51, 55.<sup>12</sup>
- 5 • Faithlife voluntarily stopped publishing *Fundamentals* on its own six months  
6 before Baronius contacted Faithlife. SAC ¶ 55.
- 7 • On April 24, 2019—the same day *Fundamentals* first was published—Faithlife  
8 stated in a public forum that “Verbum still doesn’t have rights to produce this, but  
9 we are going to revisit the rights situation with both the German publisher (Herder)  
10 and a newer U.S. publisher (Baronius) to see if we can get this licensed.” SAC  
11 ¶ 55.
- 12 • When Faithlife ceased publishing *Fundamentals*, it posted on a public forum that it  
13 had learned the CMI was incorrect. *Id.* Specifically, Faithlife publicly stated it had  
14 “learned more recently—and definitively—that the book has a new copyright  
15 holder” which was why “we had to take the book down (again).” *Id.* Faithlife also  
16 stated that it was attempting to work with that new copyright holder (Baronius) to  
17 license the book—in other words, affirmatively correcting the copyright  
18 information and publicly stating that Baronius was the correct copyright holder. *Id.*
- 19 • The allegedly “false CMI” is simply the copyright information from the version of  
20 the book that Faithlife scanned—the Second Edition from 1957. SAC Exh. 9, Dkt  
21 # 48-10; FAC Exhs. 7 and 8, Dkt. # 13-8, 13-9.

22 These factual allegations simply are not consistent with an intent to induce, enable,  
23 facilitate, or conceal infringement, and indeed render such allegations implausible. A party  
24 that intended to induce, enable, facilitate, or conceal infringement would not voluntarily cease  
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26 <sup>12</sup> Note that paragraph 49 incorrectly states March—this appears to be a typo as the screenshot in the same  
paragraph shows April 24th, and the remaining factual allegations in the SAC state April.

1 its publication, publicize its own investigation into the copyright, and publicly correct the  
2 copyright information. The allegations and exhibits also show that Faithlife simply provided  
3 the CMI from the 1957 book version it scanned—hardly a nefarious scheme to induce, enable,  
4 facilitate, or conceal infringement. Instead, Baronius’s allegations indicate that Faithlife was  
5 acting innocently and transparently. *See Stevens v. Corelogic, Inc.*, 899 F.3d 648, 671 (9th  
6 Cir. 2018) (citing legislative history to show that “Section 1202’s provisions ‘do not apply to  
7 those who act innocently . . .’”) (ellipsis in original).

8 Baronius also attached exhibits to the SAC showing that Faithlife’s publication of  
9 *Fundamentals* was accidental and without intent—directly contradicting Baronius’s  
10 barebones allegations of intent. Specifically:

- 11 • Faithlife’s then-CEO explained to Baronius that Faithlife’s employees had  
12 “consult[ed] a copyright renewal database and ma[d]e a possible-incorrect  
13 determination, based on not finding the book in the renewal database, and our lay-  
14 interpretation of the copyright laws.” SAC Exh. 7; Dkt. # 48-8 at p. 9. The employees  
15 had “made a good faith effort to determine the copyright status and ensure the title was  
16 in the public domain, using what they thought was a complete and correct process.” *Id.*
- 17 • The employees who made the previous mistake in 2013 had left the company and  
18 “different team members (not employed with [Faithlife] in 2013) consulted the  
19 copyright databases again, and not knowing the history on this title, made the same  
20 interpretation as the first time.” *Id.* (“The issue at hand was this second mistake, made  
21 by a different employee. It was unintentional, was remedied as soon as brought to our  
22 attention, and resulted in \$388 in revenue, and a list-price loss to you of under \$5,000.  
23 We followed up with an offer to give you all this revenue and more.”).<sup>13</sup>

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24  
25  
26 <sup>13</sup> Baronius actually included factual allegations confirming this fact, specifically alleging that Craig St. Clair, the Verbum Product Manager responsible for the publication of *Fundamentals* in 2019, was employed “between September 2017 and March 2020.” SAC ¶ 21.

- When initially contacted by Baronius, Faithlife offered its “deepest apologies” and stated that “[t]he posting of the title was inadvertent and it was taken down from our website and made unavailable for sale when the error was realized.” SAC Exh. 6.
- Faithlife generated a whopping \$388 in revenue from 75 total copies distributed of *Fundamentals* during the two months it was made available. SAC Exh. 6 and 7.

These statements obviously come directly from Faithlife. But this case is unusual because these statements are (1) attached to the complaint; and (2) uncontested by any non-conclusory factual allegations by Baronius. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (The Court “need not accept as true conclusory allegations that are contradicted by documents referred to in the complaint.”). Aside from its generic recitations of the intent elements, Baronius has not alleged facts that Faithlife’s explanations are untrue. As such, Baronius’s boilerplate allegations are not plausible. This claim for violation of § 1202(a) should be dismissed.

**E. All claims should be dismissed with prejudice.**

Baronius has had three bites at the apple and has failed to plausibly state a claim as to any of the four claims. Baronius also declined to amend for a fourth time and already has had the opportunity to amend after Faithlife raised that Baronius has not plausibly alleged copyright ownership or intent under the DMCA. Faithlife understands that Baronius has attached all of the evidence it possesses regarding copyright ownership—there are no further factual allegations Baronius could make to establish ownership of either the *Fundamentals* copyright or an exclusive right to *Grundriss* that is allegedly infringed. Further amendment therefore would be futile and the claims should be dismissed with prejudice. *Khalid v. Microsoft Corp.*, 409 F. Supp. 3d 1023, 1031 (W.D. Wash. 2019); *see also Chaves v. Amazon.com Servs. LLC*, 2022 WL 1908827, at \*2 (W.D. Wash. May 23, 2022), report and recommendation adopted, 2023 WL 3301994 (W.D. Wash. May 8, 2023) (further amendment was futile because the complaint had already been amended twice).

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#### IV. CONCLUSION

Based on the foregoing, Faithlife respectfully requests that the Court dismiss Plaintiff's Second Amended Complaint and all claims therein pursuant to Fed. R. Civ. P. 12(b)(6) for failure state a claim upon which relief can be granted.

DATED this 24th day of May, 2023.

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Attorneys for Defendant  
Faithlife Corporation

I certify that this motion contains 7,783 words, in compliance with LCR 7(e)(3).



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# EXHIBIT 1

Home > Acts > 1927 > Industrial and Commercial Property (Protection) Act, 1927

# Industrial and Commercial Property (Protection) Act, 1927

Ownership of copyright, etc. **158.**—(1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

- (a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and
- (b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitation as to place or otherwise and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:



Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of the period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered in to by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

